

OpenStack Foundation Gold Member Application

The undersigned submits this OpenStack Foundation Gold Member Application pursuant to the terms of that Gold Member Agreement between the entity named below and the OpenStack Foundation.

- 1) Full Corporate Name of Applicant for Gold Membership: : SCALITY
- 2) Annual Membership Fee calculated as defined in Section 3 of the Gold Member Agreement: \$50000
- 3) Do you have any Affiliations with another Initial Gold Member or an Initial Platinum Member listed below (as "Affiliated" and "Affiliation" are defined in the Bylaws)? If so, please describe on a separate sheet. If not, just enter "no Affiliation" here No affiliation

Platinum Member Registry for OpenStack Foundation

AT&T Inc.
Canonical Ltd.
Hewlett Packard Company
IBM
Nebula Inc
Rackspace US, Inc.
Red Hat, Inc.
Suse

Gold Member Registry for OpenStack Foundation

The Cloudscaling Group, Inc.
ClearPath Networks, Inc.
Cloud Computing Association in Taiwan (CCAT)
Cisco Systems, Inc.
Dell, Inc.
DreamHost
Mirantis, Inc.
Morphlabs, Inc.
NetApp, Inc.
Piston Cloud Computing
Yahoo!

4) Name of Gold Member: SCALITY

5) Signature: 

Name: JEROME LECAT

Title: CEO

Date: Oct 11th, 2012

THE OPENSTACK FOUNDATION GOLD MEMBER AGREEMENT

This Gold Member Agreement (“GM Agreement”) between the entity identified in the signature block below (“GM Member”) and OpenStack Foundation (the “Foundation”) governs the rights and obligations as a Gold Member of the Foundation and is effective on the date that both parties execute the GM Agreement. The parties agree as follows:

1. Rights. The rights and obligations of the GM Member are defined in the Certificate of Incorporation and Bylaws (including policies which are exhibits to the bylaws, including the Community Code of Conduct and Trademark Policy) of the Foundation located at www.openstack.org/legal on the date that the GM Member submitted the Gold Member Application (“GM Application”), as they may be amended from time to time (the “Certificate”, “Bylaws,” and the “Community Code of Conduct” respectively). The changes to the Certificate, Bylaws and Community Code of Conduct shall be effective when posted at the Foundation website.

2. GM Obligations.

(a) The GM Member will provide complete and accurate information on the GM Application on the date of submission. The GM Member will continue to update such information to ensure that it remains complete and accurate. In particular, the GM Member will promptly update any change in its Affiliate status as defined in the Bylaws and its email contact address.

(b) The GM Member will comply with the obligations of Gold Members in the Certificate, Bylaws and the Community Code of Conduct;

(c) The GM Member will regularly check the Certificate, Bylaws and Community Code of Conduct to ensure that it understands its obligations;

(d) The GM Member consents to making available to the public its name. In addition, the GM Member consents to the use of other information in the GM Application as provided in the Bylaws; and

(e) The GM Member consents to communication by electronic means to its email contact address.

3. Payment Obligations.

(a) The GM Member will pay annual membership fees as calculated below (“Annual Membership Fees”) within forty-five (45) days of receiving an invoice from the Foundation which invoice shall be sent within ten (10) days of the commencement of the term.

(b) Except as provided below, the Annual Membership Fees for the initial term and each renewal term (as defined below) shall be equal to one quarter of one percent (.025%) of the gross revenues of the GM Member as reported under US GAAP or IFRS GAAP in the most recent fiscal year for the GM Member which ended prior the commencement of the initial term or renewal term, as applicable (“Annual Gross Revenues”); provided however that in no event shall the Annual Membership Fees be less than Fifty Thousand Dollars (\$50,000.00) or more than Two Hundred Thousand Dollars (\$200,000.00). Upon the request of the Executive Director, the GM Member will provide its Annual Gross Revenues within ten (10) days of the request. The

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Board of Directors shall set the Annual Fee for GM Members who are individuals, government agencies or academic institutions. The Foundation shall retain GM Member's Annual Gross Revenues and the amount of the Annual Membership Fees in confidence except as provided by law and use such information only for the purpose of calculating GM Member's Annual Membership Fees.

(c) (i) Initial Gold Members listed on the list of Gold Members on the date of the filing of Certificate ("COI Filing Date"). The Initial Gold Members shall pay an additional amount which shall be the Annual Membership Fee for 2012, pro rated based on the period between the COI Filing Date through December 31, 2012. This payment shall be due within thirty days of the COI Filing Date. (ii) GM Member who is not an Initial Gold Member but whose term commences in 2012, shall pay an Annual Membership Fee for 2012, pro rated based on the period between the effective date of the commencement of the term through December 31, 2012. This payment shall be due within thirty days of the receipt of an invoice from the Foundation.

(d) If a GM Member's Annual Membership Fees are not paid when due, the Foundation may charge a late fee of one percent (1%) for each thirty (30) day period of delay.

(e) The Annual Membership Fees are not refundable except as provided in Subsection 3(f) below, or unless termination is by the Board of Directors as provided in Section 4(d) or the GM Member terminates the GM Agreement based on a material change in the mission of the Foundation as provided in Section 4(e). In such cases, the Foundation shall refund the Annual Membership Fees for the term pro rated for the remaining period of the initial term or renewal term.

(f) Except as provided below, if the GM Member's term commences on a date after January 1, 2013, but not on for a full annual term (i.e. on a date other than January 1) shall pay an Annual Membership Fee for such year, pro rated based on the period between the effective date of the commencement of the term of such GM Member through December 31 of such year. If the GM Member replaces an existing Gold Member during the term of such existing Gold Member, the Executive Director may require the new GM Member to pay dues pro rata for the remaining part of the term for which the new GM Member is admitted commencing on the effective date of such term as provided in the Bylaws and shall use the payments by the new GM Member to refund to the prior Gold Member the pro rata amount paid by such new GM Member for such term. This payment shall be due within thirty days of the receipt of an invoice from the Foundation.

(g) The Board of Directors may adjust the amount or means of calculating the Membership Fees for all Gold Members from time to time, provided that such adjustments may not be made more often than once per twelve (12) months. Any modified fee will be effective for GM Member for the renewal term that begins one hundred and eighty (180) days or more after the date on which the Board of Directors adopts the adjustment.

4. Term and Termination.

(a) The initial term of the GM Agreement for the Initial Gold Members shall commence as provided in the Bylaws and shall continue until December 31, 2013.

(b) The initial term of the GM Agreement for a GM Member who is not an Initial Gold Member shall commence on the date set forth in the Bylaws and shall terminate as provided in the Bylaws.

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(c) Upon expiration of the initial term, the GM Member shall give notice of renewal as provided in the Bylaws and the period of the renewal term shall be as provided in the Bylaws.

(d) The Board of Directors, by a vote of two thirds of all of the Board of Directors who are currently serving, may terminate GM Agreement for the action of the GM Member to take action or make statements adverse to the Foundation. The Secretary shall give written notice to the GM Member of the decision and the termination shall be effective on the receipt of such notice.

(e) The GM Member may terminate the GM Agreement if the Foundation materially changes its goals. The GM Member shall give notice of the termination to the Executive Director. The termination shall be effective on the receipt of such notice by the Foundation.

(f) In addition, the GM Agreement may be terminated as provided in the Bylaws.

5. Marketing Programs. Gold Members will have access to commercial use logo marketing programs at no additional cost.

6. Miscellaneous. Capitalized terms used in this GM Agreement and not defined in this GM Agreement shall have the meaning given in the Bylaws. Sections 3 shall survive expiration or termination of this GM Agreement This GM Agreement is governed by the laws of the State of Delaware, but not including its conflict of law principles. This GM Agreement may not be transferred to any other party, whether by operation of law or otherwise. This GM Agreement (including the GM Application, Certificate, Bylaws and Community Code of Conduct) constitutes the entire agreement between the parties concerning membership in the Foundation and supersedes all written or oral prior agreements or understandings with respect thereto. No modification, extension or waiver of or under this GM Agreement is valid unless it is made in a writing which identifies itself as an amendment to this GM Agreement and that writing is signed by an authorized representative of each party. No waiver will constitute, or be construed as, a waiver of any other obligation or condition of this GM Agreement.

Name of Gold Member: SCALITY

Signature: 

Name: SERONE LECAT

Title: CEO

Date: 10/11/12

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Signature: _____

Name: Jonathan Bryce

Title: Vice President

Date:

